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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554****OCT - 4 2001****FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )

Numbering Resource Optimization )

CC Docket No. 99-200 /

To the Commission:

**REPLY COMMENTS**

Metrocall, Inc., Power-Finder West Communications, LLC, Primo Enterprises LLC and Tel/Logic Inc. (collectively, the "Joint Commenters") hereby file these reply comments in support of the petition of the Competitive Telecommunications Association ("CompTel") and the Personal Communications Industry Association ("PCIA") for reconsideration of the decision by the Federal Communications Commission ("Commission") to impose a new reporting requirement for central office codes ("CO codes") within the 500 and 900 Numbering Plan Areas ("NPAs") without providing notice and opportunity for comment or obtaining Office of Management and Budget ("OMB") approval for the modifications to FCC Form 502 that the new requirements necessitated.<sup>1</sup> All of the Joint Commenters provide service using 500 numbers – and reported the utilization and forecast data for these 500 numbers in FCC Form 502s dated August 1, 2001 – and thus have a direct interest in this proceeding. The Joint Commenters strongly support the CompTel/PCIA Petition, and urge the Commission to rescind the new 500 and 900 reporting requirement.

<sup>1</sup> *Numbering Resource Optimization*, CC Docket No. 99-200, *Public Notice*, DA 01-1409 (rel. June 11, 2001) ("*Reporting Notice*"), which was published in the Federal Register on Friday, June 15, 2001, Vol. 66, No. 116 at 32623.

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The breadth of support for the CompTel/PCIA Petition is unprecedented. AT&T, CompTel, CTIA, PCIA, Sprint, USTA and WorldCom agree that none of the parties who participated in this proceeding – whether incumbent or competitor, wireline or wireless – could have interpreted the notice of proposed rulemaking – or even the resulting orders and rules themselves – to encompass non-geographic numbering resources. None of the interested parties opposed the CompTel/PCIA petition. The breadth of support for the CompTel/PCIA petition combined with the fact that none of the interested parties commented on reporting for non-geographic numbering resources confirms the conclusion that the Commission failed to provide interested parties notice sufficient to afford them a reasonable opportunity to participate in the rulemaking process, as section 553(b) of the Administrative Procedure Act requires.<sup>2</sup>

AT&T, CompTel, CTIA, PCIA, Sprint, USTA and WorldCom also agree that the Commission imposed a new reporting requirement for 500 and 900 numbers and significantly modified FCC Form 502 without obtaining prior approval from the OMB, as the Paperwork Reduction Act (“PRA”) requires.<sup>3</sup> OMB approval is necessary because the new reporting requirement seeks to collect information on 500 and 900 numbers from more than 10 entities.<sup>4</sup> For example, the Joint Commenters are aware of over 70 entities that had to file FCC Form 502 for the first time after the Commission imposed the new reporting requirement because they do not hold any geographic numbering resources.

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<sup>2</sup> 5 U.S.C. § 553(b). *See Shell Oil Co. v. EPA*, 950 F.2d 741, 761 (D.C. Cir. 1991) (holding that the EPA’s “fail[ure] to identify even one comment recommending (or opposing)” its proposal “reinforce[s] our conclusion that notice was inadequate.”).

<sup>3</sup> 44 U.S.C. § 3502(3)(A)(i) (Supp. IV 1998).

<sup>4</sup> *See, e.g., Portland Cellular Partnership*, 11 FCC Rcd 19997, ¶ 24 (1996) (concluding that PRA review was required for reporting requirements in analogous regulations).

The Joint Commenters have experienced firsthand the substantive and material modifications that the Commission made to FCC Form 502 to accommodate reporting of non-geographic numbering resources.<sup>5</sup> Because FCC Form 502 is not designed for the reporting of non-geographic numbering resources, the Commission created a separate version of FCC Form 502 for non-geographic numbering resources.<sup>6</sup> This form is unnecessarily confusing and burdensome, which increases the chances that reports will contain errors. For example, the FCC Form 502 for non-geographic numbering resources requires all entities, *whether rural or non-rural and whether operating in pooling or non-pooling areas*, to report

- (1) the utilization of non-geographic numbers on Form U2, which is designed for “*rural primary carriers*,”
- (2) the utilization of intermediate non-geographic numbers on Form U4, which is designed for “*rural intermediate carriers*,”
- (3) the forecasted need for initial non-geographic codes on Form F3a, which is designed for “*carriers in non-pooling areas*,” and
- (4) the forecasted need for growth non-geographic codes on Form F3b, “which is designed for “*carriers in non-pooling areas*.”

In order to prevent entities from utilizing the wrong forms, the Commission blacked out the Rural Certification Form and Forms U1, U3, F1a, F1b, F2a and F2b in their entirety, as well as

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5 An agency may not make a substantive or material modification to a collection of information after such collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter. 44 U.S.C. § 3507(h)(3), *cited in Tozzi v. EPA*, 1998 WL 1661504 (1998).

6 *See, e.g.*, NANPA FCC Form 502 Index, <http://www.nanpa.com/nruf/index.html> (last visited October 3, 2001) (listing separate instructions and FCC Form 502s for geographic and non-geographic numbering resources); NANPA Instructions For Geographic Numbering Resources, <http://www.nanpa.com/nruf/geo.html> (last visited October 3, 2001) (providing instructions for filing FCC Form 502 for geographic numbering resources and a link for the geographic FCC Form 502); NANPA Instructions For Non-Geographic Numbering Resources, <http://www.nanpa.com/nruf/nongeo.html> (last visited October 3, 2001) (providing instructions for filing FCC Form 502 for non-geographic numbering resources and a link for the non-geographic FCC Form 502). Moreover, the 500 and 900 NPAs must be sent to different e-mail addresses, despite the Job Aid’s confusing instruction that carriers can only file one report per OCN. *See, e.g.*, Non-Geographic Job Aid at 2-3 (downloadable from <http://www.nanpa.com/nruf/nongeo.html>).

significant portions of Forms U2, U4, F3a, F3b and the instructions. *However, the blacked out portions are displayed only when viewed on a computer and do not appear when the FCC Form 502 for non-geographic numbering resources is printed out.* When printed out, the FCC Form 502 for non-geographic numbering resources is identical to the FCC Form 502 for geographic numbering resources. Thus, the printed out version of FCC Form 502 for non-geographic numbering resources is incomprehensible.

The confusion is compounded when the instructions on the printed out FCC Form 502 for non-geographic numbering resources are compared with the instructions on NANPA's Job Aid for non-geographic numbering resources. The instructions on the FCC Form 502 for non-geographic numbering resources do not mention non-geographic numbering resources – only geographic numbering resources – and, if followed, would cause an entity to fill out the form incorrectly. Moreover, the instructions on FCC Form 502 for non-geographic numbering resources, which theoretically are the official instructions that entities must follow to file the report, are in direct conflict with the instructions on NANPA's Job Aid for non-geographic numbering resources, which are the unofficial instructions that NANPA provides to assist entities in filling out the form. However, the only way an entity can correctly fill out FCC Form 502 for non-geographic numbering resources is by ignoring the official instructions on the form itself and following the unofficial instructions on NANPA's Job Aid for non-geographic numbering resources. This unnecessary confusion would have been avoided if the Commission had provided adequate notice and opportunity to comment as required by the APA and obtained prior OMB approval for the modified FCC Form 502 as required by the PRA.

The problems with the Commission's new reporting requirement for non-geographic numbering resources run far deeper than the format of the report itself. For example,

the definitions that the Commission adopted for the reporting requirements, which are designed for geographic numbering resources, are not appropriate for non-geographic numbering resources. Among other things, the definitions assume that any given number can only be used by one carrier at a time to provide service to one customer at a time. Although this assumption is accurate for geographic numbering resources, it frequently is inaccurate for non-geographic numbering resources, which can be used simultaneously by numerous entities to provide service to multiple customers in different geographic regions. Although the Joint Commenters complied with the Commission's illegal new reporting requirement, the data on their FCC Form 502 do not accurately reflect the way in which they use non-geographic numbering resources because the definitions are not adequate where two or more service providers simultaneously use the same number to offer service to different customers in different geographic locations.

As the CompTel/PCIA Petition explained, collecting the information requested by FCC Form 502 and populating the form with this data can be a complicated and burdensome procedure for many carriers, especially smaller carriers with limited resources. Moreover, NANPA frequently rejects FCC Form 502s multiple times due to various errors in the data. A carrier is not eligible to receive additional numbering resources until these errors are corrected, which can harm carriers, particularly under rationing or lottery allocation plans. By imposing a new reporting requirement and amending FCC Form 502 without providing notice and opportunity for comment or obtaining OMB approval, the Commission unduly burdened the Joint Commenters and other holders of 500 and 900 codes. Therefore, the Joint Commenters urge the Commission immediately to rescind the new reporting requirement for CO codes within the 500 and 900 non-geographic NPAs.

## CONCLUSION

For the foregoing reasons, the Joint Commenters urge the Commission to set aside the new reporting requirement for CO codes within the 500 and 900 non-geographic NPAs pending a proper notice and comment rulemaking proceeding and, if necessary, OMB approval of modifications to FCC Form 502.

Respectfully submitted,

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Dated: October 4, 2001

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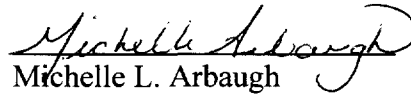
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